

THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

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June 23, 2003

Sent via e-mail, hand delivery and/or U.S. Mail

Mary L. Cottrell, Secretary  
Massachusetts Department of Telecommunications and Energy  
One South Station, 2nd Floor  
Boston, MA 02110

Re: Interim Surcharge for Wireline E-911, D.T.E. 03-63

Dear Ms. Cottrell:

The Attorney General submits these comments to the Massachusetts Department of Telecommunications and Energy ("Department" or "DTE") in response to the Department's May 29, 2003 Notice of Investigation, Public Hearing, Intervention and Request for Comments on a proposed enhanced 911 ("E911") wireline interim surcharge ("Notice"). Based on the Attorney General's review of the June 13, 2003 Interim Surcharge Proposal ("Proposal"), the Department should:

- Calculate the E911 wireline interim surcharge to cover just fiscal year ("FY") 2003 and FY 2004 (January 1, 2003 - June 30, 2004), instead of the full five year planning period (January 1, 2003 - December 31, 2007);
- Defer recovery of Verizon's proposed deficit until the Department fully investigates the deficit in evidentiary hearings; and
- Adopt an interim E911 wireline surcharge of \$.64 per month for FY 2003 and FY 2004.

**I. BACKGROUND**

The Department opened this docket as an outgrowth of its pending E911 wireline rulemaking proceeding (D.T.E. 03-24) and new legislation that directed the Department to replace the current funding mechanism for E911 services, disability equipment and training (Chapter 239 of the Acts of 2002, "An Act Relative To Funding For Certain Telecommunications Programs Within the Commonwealth" ["Act"]). The state legislature, in the Act, directed the Department to: (1) create a new E911 funding system; (2) set a new E911

wireline surcharge; (3) determine whether the E911 wireline surcharge will repay any of Verizon's claimed existing E911 deficit; (4) oversee the Statewide Emergency Telecommunications Board ("SETB")'s ongoing E911 wireline expenditures; and (5) make long-term recommendations on funding E911 wireline services. The Act also directed SETB to manage the E911 wireline trust fund.<sup>1</sup>

The Attorney General submitted comments to the Department on its proposed regulations in D.T.E. 03-24, *E911 Wireline Surcharge Rulemaking*, on April 22, 2003, May 9, 2003, and May 20, 2003. The Attorney General asks the Department, in the interest of administrative efficiency, to incorporate by reference his three D.T.E. 03-24 comments and arguments into the record in this proceeding. 220 C.M.R. § 1.10(3).

On May 29, 2003, the Department issued its Notice opening this investigation and directed Verizon New England, Inc., d/b/a Verizon Massachusetts ("Company" or "Verizon") and the SETB to submit a proposal for the appropriate level of the interim E911 wireline surcharge. On June 13, 2003, Verizon and SETB filed their joint Proposal:

- All 5,087,535 business and residential Massachusetts telephone (wireline) customers would be charged an \$0.85 monthly "E911/Disability Access Fee" beginning September 1, 2003, to pay for wireline E911 services, SETB operational expenses, Relay Services, Disabilities Access, carrier administrative costs, and uncollectible revenue expenses, which Verizon and SETB anticipate will total \$218 million over five years (from January 1, 2003, to December 31, 2007);
- Verizon would recover \$31.2 million from the surcharge to repay what Verizon asserts is be a deficit resulting from its past support of the E911 program; and
- Of the \$218 million estimated E911 expenses over the next five years, \$68 million reflects possible capital expenditures for carriers' equipment upgrades beginning FY 2005.

The proposed monthly E911 wireline surcharge calculation apparently fails to include offsets from other E911 revenue sources, such as the \$300,000 legislative assessment against carriers' revenues earmarked for the SETB under G.L. c. 6A, § 18F, E911 Verizon tariff fees paid by other carriers to Verizon for E911 services,<sup>2</sup> and Verizon's and other carriers' directory assistance revenues collected under G.L. c. 159, § 19A.

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<sup>1</sup> SETB also manages an E911 wireless trust fund into which Massachusetts' 3.2 million wireless subscribers each pay \$.30 per month at the present time.

<sup>2</sup> See, e.g., D.T.E. 03-24, *E911 Wireline Rulemaking Proceeding*, Comments of Allegiance Telecom of Massachusetts, April 21, 2003, pp. 1-3

## **II. THE DEPARTMENT SHOULD ADOPT A \$.64 MONTHLY INTERIM SURCHARGE, NOT \$.85 AS VERIZON AND SETB PROPOSE.**

Verizon and SETB calculated the proposed monthly E911 wireline surcharge of \$.85 to recover nearly \$218 million for a five-year period (January 1, 2003 - December 31, 2007), but collected over a 52-month period (September 1, 2003 through December 31, 2007). Proposal, Exhibit 1. This rate is overinflated and contains unsubstantiated expenses and unsupported estimates. Instead, the Department should calculate the E911 interim surcharge rate using actual and substantiated expenses, revenues and estimates for FY 2003 and FY 2004, *i.e.*, January 1, 2003 to June 30, 2004 collected over ten months (September 1, 2003 - June 30, 2004). The Department should also defer Verizon's recovery of its asserted pre-existing E911 deficit and exclude unauthorized uncollectible offsets<sup>3</sup> and unsubstantiated capital expenditure estimates for FY 2005 and beyond. This results in an interim monthly E911 surcharge rate of \$.64, a difference of \$.21 per month (25% reduction) which would cost telephone customers nearly \$11 million less than the proposed rates (see Attachment "A").

### **A. The Department should restrict the interim surcharge to FY 2003 and FY 2004.**

Verizon and SETB admit in the Proposal that \$68 million of the \$218 million total is sought for possible capital expenditures in FY 2005 - FY 2007 (31% of the total estimated expenses for all five years). Proposal, Exhibit 1. They base this estimate on incomplete information and an incomplete procurement process. Proposal, p. 2.<sup>4</sup> The interim rate, however, should not be based on projections of possible capital expenditures which may or may not occur three to five years hence. Rather, the Department should restrict the interim E911 wireline

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<sup>3</sup> Verizon and SETB seek to recover 2.36 percent of the estimated costs for "uncollectible revenues" in the interim surcharge, over and above a one percent carrier administrative fee which the Act authorizes. Proposal, Exhibit 1. Verizon claims that the Department's proposed regulations, 220 CMR 16.03(8), would allow the E911 surcharge to include a portion of uncollectible revenues. Proposal, p. 3. The purpose of this proposed rule, however, is to direct the use and transmittal of the surcharge and to eliminate the surcharge sum from carrier assessment calculations (such as those imposed by G.L. c. 6A, § 18F). Unlike the one percent carrier administrative fee, neither the Act nor the Department's proposed rules specifically permits recovery of carriers' E911 wireline bad debt expense. The Department should not include the uncollectible revenues portion in the interim surcharge.

<sup>4</sup> The Act requires the Department to allow recovery for only "prudently incurred expenses." Chapter 239, Acts of 2002. The Department has no basis at this time to evaluate whether \$68 million in possible capital expenditures in FY 2005 through FY 2007 are reasonably or prudently incurred expenses. The Department's proposed rules, if adopted, would permit SETB or any telecommunications company to petition the Department to review the interim surcharge for adjustment, if the need arises. Proposed Rule 220 C.M.R. § 16.03(6).

surcharge to cover FY 2003 and FY 2004 because it is a more practical approach that requires far less speculation about future costs than basing the rate on the full five year planning period, as in the Proposal. Further, Verizon and SETB have not explained why a rate that is supposed to be “interim,” not permanent, should cover the entire five-year recovery period. The Department should reject the proposed five-year recovery period for the interim rate and restrict the interim rate to recovering E911 wireline expenses for FY 2003 and FY 2004.

**B. The Department should defer recovery of Verizon’s proposed deficit until the Department fully investigates the deficit in evidentiary hearings.**

Verizon proposes to recover \$31.2 million over the next five years from the E911 surcharge as its E911 deficit. Proposal, Exhibit 1. Verizon contends that “there is no basis for investigating the ‘nature, extent and effect’ of the existing deficit for E911, relay and TDD/TTY equipment services” because Verizon underwent an independent audit in 1999. D.T.E. 03-24, *E911 Wireline Rulemaking*, Reply Comments of Verizon Massachusetts, p. 4. As the Attorney General noted in his comments in the Rulemaking, the Department must carefully examine the claimed deficit amount in evidentiary hearings and cannot simply rely solely on Verizon’s assertions or the incomplete and unapproved 1999 audit. D.T.E. 03-24, *E911 Wireline Rulemaking*, May 20, 2003 Supplemental Reply Comments, pp. 1-3. The audit, a copy of which is attached to these comments as Attachment “1,” shows questionable subsidiary expense allocations by a Verizon (then Bell Atlantic) affiliate and subsidiary known as Telesector Resources Group (“TRG”) and does not cover all years of E911 deficit data. Also, Verizon has not shown that the Department approved the 1999 audit or its questionable allocations of affiliate expenses.

Furthermore, the Company’s deficit calculation does not include any offset for directory assistance revenues Verizon receives from its customers. The SETB, in its June 12, 2003 concurrence letter, specifically urged the Department to set the E911 wireline surcharge after crediting, not excluding, the directory assistance revenues that Verizon and other carriers have received and may receive in the future from their customers.<sup>5</sup> The Proposal does not show how much money Verizon received from directory assistance revenues in 2002 or whether these funds were applied to the Company’s outstanding deficit. The Proposal does not show how much money Verizon or any other carrier anticipates receiving from directory assistance revenues during FY 2003 through FY 2007. Before setting the permanent charge, the Department should review each year’s deficit accumulation and each year’s directory assistance revenue (projected and received) to make sure that customers’ E911 wireline surcharges are based on accurate, just, reasonable, known and measurable E911 wireline expenses.

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<sup>5</sup> “Based on this data, the SETB believes that a surcharge of \$.85 per month per access line would fund the relevant programs and Verizon’s projection of the portion of the deficit that would not be funded by directory assistance (DA) revenues by 2007. ... The SETB continues to assert that DA revenues should be the primary means of funding the deficit recovery ...” SETB Support Letter, June 12, 2003.

### **III. CONCLUSION**

For these reasons, the Department should adopt an interim E911 wireline surcharge rate of \$.64 to cover only actual and substantiated E911 wireline expenses and estimates for FY 2003 and FY 2004.

Sincerely,

Karlen J. Reed  
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Utilities Division  
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**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Investigation by the Department of Telecommunications and Energy to	)	
establish a surcharge to recover prudently incurred costs associated with	)	
the provision of wireline Enhanced 911 services, relay services for	)	D.T.E. 03-63
TDD/TTY users, communications equipment distribution for people with	)	
disabilities, and amplified handsets at pay telephones.	)	
	)	

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated in the attached service list by e-mail and either hand-delivery or mail.

Dated at Boston this 23rd day of June 2003.

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**Attachment A**

**D.T.E. 03-63, E911 Wireline Interim Surcharge  
Attorney General's E911 Interim Wireline Surcharge  
Fiscal Year 2003, 2004 (AG Data)**

## **Attachment 1**

### **Verizon's 1999 Audit**